

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-406

AMERICAN SKIING COMPANY
Request for Waiver of Opt-Out Fee
of Chapter 301

June 22, 2001
ORDER GRANTING WAIVER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

On June 13, 2001, American Skiing Company (ASC) filed a request for a waiver of the opt-out fee provisions of Chapter 301 (section 2(c)(2)). ASC states that on March 1, 2000 it entered a one-year contract with a competitive electricity provider (CEP). In February, 2001, ASC was informed that its CEP would not continue to provide it service after that one-year contract terminated. Because ASC expected to finalize a merger by late March, it decided to wait until the merger was completed before obtaining a new CEP. The merger ultimately did not occur.

ASC is now negotiating with CEPs and expects to contract with a new supplier in the near future. However, the requirement that an opt-out fee be paid prior to leaving the standard offer creates a substantial disincentive to obtaining a competitive supplier. ASC states that the opt-out fee provisions are intended to deter consumers from exploiting arbitrage conditions between standard offer rates and market rates and that its default to the standard offer was not an attempt to do so, but was a result of being dropped by its CEP at a time when ASC could not commit to another substantial commercial endeavor. ASC states that as soon as it was able to allocate resources to finding another supplier, it began to do so.

In its recent Order adopting changes to the opt-out fee provisions of Chapter 301, the Commission stated that waivers would be appropriate if the default to standard offer service was beyond the customer's control or otherwise not related to gaming the standard offer service. *Order Adopting Rule and Statement of Factual and Policy Basis*, Docket No. 2000-904 at 4 (Jan. 24, 2001). ASC's default to the standard offer was not related to gaming, but was the result of unexpected action by its CEP and the devotion of its resources to completing a merger. Section 10 of Chapter 301 allows the Director of Technical Analysis to grant waivers that are not inconsistent with the purposes of the rule. I find that granting ASC's request that the opt-out fee be waived would not be inconsistent with the purpose of the fee. However, consistent with what ASC has stated to be its intent, ASC should act promptly to return to CEP service. Therefore, ASC's request for a waiver of the opt-out fee is hereby granted, but is conditioned upon ASC being off the standard offer by the later of two months from the date of this Order or ASC's August meter read dates.

Dated at Augusta, Maine, this 22nd day of June, 2001.

BY ORDER OF THE DIRECTOR OF TECHNICAL ANALYSIS

Faith Huntington
Acting Director